

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON AGRICULTURE**

**Call to Order:** By **CHAIRMAN DONALD L. HEDGES**, on March 8, 2001 at 3:12 P.M., in Room 172 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Donald L. Hedges, Chairman (R)  
Rep. Linda Holden, Vice Chairman (R)  
Rep. Ralph Lenhart, Vice Chairman (D)  
Rep. Darrel Adams (R)  
Rep. Norma Bixby (D)  
Rep. Rick Dale (R)  
Rep. Dave Gallik (D)  
Rep. Kathleen Galvin-Halcro (D)  
Rep. Christopher Harris (D)  
Rep. Verdell Jackson (R)  
Rep. Jim Keane (D)  
Rep. Larry Lehman (R)  
Rep. Holly Raser (D)  
Rep. Clarice Schrumpf (R)  
Rep. Frank Smith (D)  
Rep. Butch Waddill (R)  
Rep. Karl Waitschies (R)  
Rep. Merlin Wolery (R)

**Members Excused:** Rep. Gilda Clancy (R)

**Members Absent:** None.

**Staff Present:** Krista Lee Evans, Legislative Branch  
Robyn Lund, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 81, 3/10/2001; SB 197,  
3/10/2001; SB 245, 3/10/2001;  
SB 259, 3/10/2001

HEARING ON SB 81

Sponsor: Senator Don Hargrove, SD 16

Proponents: Ralph Peck, Department of Agriculture  
Bud Clinch, Department of Natural Resources and  
Conservation

Opponents: None

Opening Statement by Sponsor:

Senator Don Hargrove, SD 16, said that the bill is just to transfer the administrative activities for the Montana Ag Heritage Program from Agriculture to DNRC. This is already happening and the DNRC is operating under an understanding. This will make it official.

Proponents' Testimony:

*{Tape : 1; Side : A; Approx. Time Counter : 2.5}*

Ralph Peck, Department of Agriculture, stands in support of this bill.

Bud Clinch, DNRC, also stands in support of this bill.

Closing by Sponsor:

*{Tape : 1; Side : A; Approx. Time Counter : 3.3}*

Senator Hargrove said that this passed the Senate by 50 to 0.

REP. DALE will carry this bill.

HEARING ON SB 197

Sponsor: Senator John Tester, SD 45

Proponents: Robyn Klein, Governor's Task Force on Wild Medicinal  
Plants  
Nancy Schlepp, Montana Farm Bureau  
Kevin Chappell, DNRC  
Inez Wates, Bighorn Botanicals  
Janet Ellis, Montana Audubon

Opponents: George Ochenski, Confederated Salish and Kootenai

**Tribe****Opening Statement by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 5}***

**Senator John Tester, SD 45,** stated that this bill deals with the harvesting of wild plants. It encourages the growth of statewide sustainable wildcrafting of native plants. It requires some permission aspects that are listed on pages two and three. It is a straight forward bill. There were some questions raised between the time that this bill was heard and when it passed through the Senate. Those problem arise with sovereignty of the reservations. Those can be easily cleared up by this committee.

**Proponents' Testimony:**

***{Tape : 1; Side : A; Approx. Time Counter : 7}***

**Robyn Klein, Governor's Task Force on Wild Medicinal Plants,** submitted written testimony. **EXHIBIT**(agh53a01)

**Nancy Schlepp, Montana Farm Bureau,** supports this bill. It addresses both private property rights and liability issues.

**Kevin Chappell, DNRC,** stated that in previous years they have had troubles with plant material that has been illegally wildcrafted off the state lands that they manage. This would be helpful in monitoring those activities. It requires that purchasers of wildcrafted material keep track of where those materials came from and it gives law enforcement the ability to issue citations after those materials have left the property.

**Inez Wates, Bighorn Botanicals,** submitted written testimony. **EXHIBIT**(agh53a02)

**Janet Ellis, Montana Audubon,** emphasized that this is not aimed at families collecting wild plants for personal consumption; it is aimed at commercial harvest. This is very proactive. If we lose the plants that we have in Montana, we lose the source of seed adapted to Montana conditions.

**Opponents' Testimony:**

**George Ochenski, Confederated Salish and Kootenai Tribes,** submitted written testimony. **EXHIBIT**(agh53a03)

**Questions from Committee Members and Responses:**

*{Tape : 1; Side : A; Approx. Time Counter : 22.3}*

**REPRESENTATIVE CHRISTOPHER HARRIS** asked if someone was renting land that had these plants on it, would it still be a crime to be harvesting? **Senator Tester** said that if you were harvesting commercially it would most likely be in your rental agreement. If it is for personal use that is fine too. **REP. HARRIS** said that he could see where there might be long-term leases already in effect that don't cover it. **Senator Tester** said that if it is for commercial purposes, that is correct. **REP. HARRIS** asked, what if he had leased property for 4 years with no restrictions in his lease agreement, he is harvesting plants, now this law makes him guilty of a misdemeanor; was that the intent? **Senator Tester** said that if it was done for commercial purposes, yes.

**REPRESENTATIVE FRANK SMITH** said that last year they passed a law for harvesting echinacea, is this just another trespass law? **Mr. Chappell** doesn't believe so because the legislation proposed allows law enforcement to follow up once it is removed from the property and question where it came from to make sure there was permission to harvest it. It also requires the purchaser of the product to keep track of where it came from. **REP. SMITH** asked how many people had been ticketed for harvesting in the last two years. **Mr. Chappell** was not aware of any. **REP. SMITH** asked how they can tell if it has been dug. **Mr. Chappell** said that there are often large holes left on the landscape.

**REPRESENTATIVE VERDELL JACKSON** said, if someone picked some flowers out of the ditch, they would not be in violation of this law. **Mr. Chappell** said that was correct. **REP. JACKSON** asked if any of these plants were noxious plants, other than St. John's Wort. **Mr. Chappell** said that he wasn't sure. Often times, though, the opportune time to harvest may not be when it is in seed.

**REPRESENTATIVE MERLIN WOLERY** asked if the sponsor would be bringing amendments. **Senator Tester** didn't feel that it would be difficult to get an amendment that would exempt the tribal lands from this.

**REPRESENTATIVE KARL WAITSCHIES** asked if there were any restrictions when you are applying for a permit. **Mr. Chappell** said that they would have to come into the local office and supply the details of what they propose, there may have to be a MEPA analysis. It is not an automatic thing. **REP. WAITSCHIES** asked if they had regulatory power to charge people. **Mr. Chappell** said that, on the state lands, yes, they do.

**REPRESENTATIVE NORMA BIXBY** asked about jurisdiction for the tribal land, would that be part of the amendment? **Senator Tester** said yes. It would be his intent to address the problem.

**REPRESENTATIVE DARREL ADAMS** asked if he, as a land owner, gave verbal permission to someone to harvest on his land, is he liable. **Senator Tester** said no, this bill offers land owner protection. **REP. ADAMS** clarified if those people would be in violation if they haul the plants home, if they are doing it commercially. **Senator Tester** said they would not, as long as they have your permission.

**REPRESENTATIVE BUTCH WADDILL** asked if this exempted the national forests. **Mr. Chappell** believes that it includes all lands. **REP. WADDILL** asked if he had any concern with people spreading noxious weeds. **Mr. Chappell** said that they would have that concern. It would be addressed in the permitting process. **REP. WADDILL** asked who would be doing the majority of the enforcement. **Mr. Chappell** thought that would be local law enforcement.

**REP. WADDILL** asked where the majority of the wildcrafting is taking place. **Ms. Klein** said that they don't really know because there is not a way to track it. **REP. WADDILL** asked if it would include farmer's markets. **Ms. Klein** thinks that is right. Removing the buyer's responsibility would weaken the legislation.

**REP. WADDILL** questions their authority to legislate jurisdiction on national forests. Who addresses that? **REP. HEDGES** replied that the committee will make sure that they have clearly identified the responsibilities of those lands.

**REPRESENTATIVE KATHLEEN GALVIN-HALCRO** asked if Mr. Ochenski could help with the amendments. **Mr. Ochenski** said that he would do the best that he can. He will work with John Carter, who is the attorney for the Salish-Kootenai tribes, and the sponsor to come up with something to solve the problem with the tribal lands.

**REPRESENTATIVE DON HEDGES** asked what percent of the state trust lands are being leased. **Mr. Chappell** replied that they manage about 5.2 million acres; 4.1 of those are classified as grazing land, most of those are leased; 500,000 acres of agricultural land under lease; 200,000 acres of forest land are permitted for grazing purposes. Probably 80% are under some sort of lease. **REP. HEDGES** asked if any of the current leases allow the state to sublease a portion of the product coming from those state lands. **Mr. Chappell** said that the permits they issue are for specific purposes. They reserve all of the rights for those lands, so yes, they have the ability to issue permits for other things on

those leased lands. **REP. HEDGES** asked if there would be a clause in the wildcraft permit to protect the lessee from damage.

**Mr. Chappell** said that when they issue permits for other uses on lands that are leased, one of the first things that they do is contact the lessee to discuss with them any concerns they would have. **REP. HEDGES** asked if it is the responsibility of the lease holder to manage the wildcraft permit user, or would the state lands keep that as a responsibility between them and the wildcrafter. **Mr. Chappell** replied that the responsibility for managing the permit would be the department's, although they would hope to work with the lessee to monitor any potential problems that arise.

**REP. HEDGES** said that they had discussed land and land owner's responsibility. It is against the law to pick up anything in a national forest, has that been addressed in this bill?

**Senator Tester** thinks that it has addressed that. The real question here is that there will be number of people out harvesting, you drive by and wonder what is going on, this gives an avenue to help deal with that.

**REPRESENTATIVE LINDA HOLDEN** asked if the sponsor could address the buyer problem. **Senator Tester** thinks that it is clear. He doesn't think that it is unreasonable to ask where it came from. For the people who are on the up and up, this is not a problem.

**REP. HOLDEN** doesn't think that it defines how far it goes with the buyer. **Senator Tester** said the intent isn't to nail someone who is buying it.

**REP. SMITH** asked how you would prove where the plants had come from after they have been transported. **Senator Tester** said that if you don't have a permit and you get caught, you will be in trouble. He pointed out that we are talking about people who do this for a business. These are big companies who make big money. This is a tool for protection.

**Closing by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 56.1}***

**Senator Tester** said that this came out of the governor's task force. It will require a 2/3 vote from the house because of the restriction liability. We are dealing with the commercial harvesters, the big boys.

**HEARING ON SB 245**

**Sponsor:** Senator Ric Holden, SD 1

**Proponents:** Betsy Allen, representing Senator Burns  
Jeff Garrard, representing Representative Rehberg  
Lochiel Edwards, Montana Grain Growers Association  
John Bloomquist, Montana Stock Growers Association  
John Semple, Montana Cattle Women  
Nancy Schlepp, Montana Farm Bureau  
Riley Johnson, National Federation of Independent  
Business  
Bob Pyfer, Montana Credit Unions League  
Suzanne Davis, Northern Plains Resource Council

**Opponents:** None

**Opening Statement by Sponsor:**

*{Tape : 1; Side : B; Approx. Time Counter : 1}*

Senator Ric Holden, SD 1, said that this bill gives farmers and ranchers a necessary tool to help manage risks associated with production agriculture. This allows farmers and ranchers to save money during the good years and use those funds to help pay bills during the bad years. It is not unusual for a farmer to lose a whole year's income to a hail storm. Farming remains one of the most perilous ways to make a living. This bill duck tails with federal legislation sponsored by Senator Baucus and Senator Burns. **EXHIBIT (agh53a04)** He passed out a copy of the Montana Income Tax form and a handout for information. **EXHIBIT (agh53a05)** **EXHIBIT (agh53a06)** He said that essentially what the bill does is that it sets up a tax free savings management account. This allows farmers and ranchers to set aside 20% of their agricultural income, no more than \$20,000 per year. When the money is withdrawn from the account, the accumulation of the interest is taxed. The deposits into the account can't be held any longer than five years. This will help equalize the disasters that the state farmers face. There are some amendments. **EXHIBIT (agh53a07)** He then handed out some letters of support from the Montana Wool Growers and the Montana Dairy Association. **EXHIBIT (agh53a08)** **EXHIBIT (agh53a09)**

**Proponents' Testimony:**

*{Tape : 1; Side : B; Approx. Time Counter : 13.6}*

Betsy Allen, representing Senator Burns, submitted written testimony. **EXHIBIT (agh53a10)**

Jeff Garrard, representing Representative Rehberg, submitted written testimony. **EXHIBIT (agh53a11)**

**Lochiel Edwards, Montana Grain Growers Association,** said that it is time to move beyond the homestead era and to facilitate intelligent marketing. The ability for the farmer and rancher to set aside a cushion for the future would free him to make better marketing decisions without delaying or altering commodity sales for tax purposes.

**John Bloomquist, Montana Stock Growers Association,** said that this is good for mainstream business in general.

**John Semple, Montana Cattle Women,** stands in support of this bill.

**Nancy Schlepp, Montana Farm Bureau,** said the additional risk management tool that agriculture producers will have access to will help assure that our agriculture industry stays healthy and a viable, producing sector of our economy.

**Riley Johnson, National Federation of Independent Business,** said that this would allow the producers to pay mainstream money and bills. A downturn in agriculture means a downturn of money into the community. It affects everyone in rural Montana.

**Bob Pyfer, Montana Credit Unions League,** stated that they want to participate in this. Although credit unions don't have trust powers, they do handle various custodial accounts like IRAs.

**Suzanne Davis, Northern Plains Resource Council,** wanted to go on the record as supporting this bill.

**Questions from the committee:**

*{Tape : 1; Side : B; Approx. Time Counter : 26.1}*

**REPRESENTATIVE KATHLEEN GALVIN-HALCRO** asked for a definition of silvaculture. **Senator Holden** said that means a tree farm.

**REPRESENTATIVE VERDELL JACKSON** asked about the fiscal statement. The producer can set aside either \$20,000 or 20% per year on the tax date of April 15. **Senator Holden** said that was correct.

**REP. JACKSON** asked if they applied for an extension, could that extension date be used. **Senator Holden** deferred to Bob Turner, CPA. **Mr. Turner** said that the bill gives you 3 ½ months after the tax year to deposit the funds, that does not extend if you get an extension. **REP. JACKSON** asked if the producer could set the money aside on time, even if they used an extension date to file taxes. **Mr. Turner** said that right now that is not allowed under the law. **REP. JACKSON** asked if the first year they put in



\$20,000, the next year they pull \$10,000 out, they would then pay taxes on the money they took out and the interest. **Mr. Turner** said that was correct. **REP. JACKSON** continued, next year they have a good year, can they put \$10,000 in the fund? **Mr. Turner** said that they could. **REP. JACKSON** asked, at the end of five years, do they have \$10,000 that can stay two years longer. **Mr. Turner** said that was correct. The time period follows the deposit itself.

**REPRESENTATIVE KARL WAITSCHIES** asked if this was worthwhile on only a state level. **Senator Holden** said to look at your tax return form. You are going to take money off and set it aside, that money is not going to be taxed. There is a definite advantage. **REP. WAITSCHIES** stated that setting aside a loss isn't going to do any good. **Senator Holden** said that was right. There are some years when this bill is not going to be effective, but he is more optimistic than that. He is hoping that next year we will have a good year and then have an opportunity to set that money aside.

**REPRESENTATIVE JIM KEANE** asked if this bill would be like unemployment insurance for farmers. **Mr. Turner** said this bill allows a tax deduction on the state level of up to 20% of their income. Unemployment compensation is also a deduction at the state level.

**Closing by Sponsor:**

**Senator Holden** said that agriculture represents the largest part of Montana's domestic product. These farms support entire families and several generations of these families. This is a group of people that are subject to volatile markets and huge losses due to weather. This bill looks toward the future.

**Rep. Devlin** will carry this bill.

**HEARING ON HB 259**

**Sponsor:** Senator John Tester, SD 45

**Proponents:** Doug Kaercher, Hill County Commissioner  
Louis Hagener  
Jim Currie, Montana Department of Transportation  
Representative John Musgrove, HD 91  
Senator Greg Jergeson, SD 46  
John Bloomquist, Montana Stock Growers Association  
**REPRESENTATIVE MERLIN WOLERY, HD 90**

**Opponents:** None

**Opening Statement by Sponsor:**

**Senator John Tester, SD 45**, said that this bill allows for a mitigation plan with the lack of fencing in a high hazard area. In Hill County there is the largest county park in the United States; it is about 20 miles long. The Department of Transportation is due to rebuild the road that runs through that park. When the department rebuilds a road in a high hazard area they are required to fence it. This bill offers a mitigation plan, which the Department of Transportation has agreed to, to get an exemption on that fence. **EXHIBIT (agh53a12)**

**Proponents' Testimony:**

*{Tape : 1; Side : B; Approx. Time Counter : 40.9}*

**Doug Kaercher, Hill County Commissioner**, submitted written testimony. **EXHIBIT (agh53a13)** **EXHIBIT (agh53a14)**

**Louis Hagener** submitted written testimony. **EXHIBIT (agh53a15)**

**Jim Currie, Montana Department of Transportation**, stated that this bill represents an example of where local government and citizens have worked together to find solution. A fence would ruin this park.

**Representative John Musgrove, HD 91**, said that this would make a great park even better.

**Senator Greg Jergeson, SD 46**, said that this is a team effort on the part of the entire delegation.

**John Bloomquist, Montana Stock Growers Association**, stands in support of this bill.

**REPRESENTATIVE MERLIN WOLERY, HD 90**, also supports this bill.

**Questions from Committee Members and Responses:**

**REPRESENTATIVE KARL WAITSCHIES** said that he was under the impression that only interstate and primary roads had to be fenced. **Krista Lee Evans** replied that is true, however, in 67-103, whenever they reconstruct or rebuild a road they are required to fence those rights of way as well. **Senator Tester** commented that he thought it was specific to high hazard areas on secondary roads.

**REPRESENTATIVE FRANK SMITH** asked if this would have any influence on the funding. **Mr. Galt** replied that it will allow them to put some funding someplace else.

**REPRESENTATIVE VERDELL JACKSON** asked, on page 3, line 2, where did the 20 miles in length come from? **Senator Tester** said that this bill is fairly specific to this park and this park is 18 miles long.

**REPRESENTATIVE DARREL ADAMS** asked for reasons that there not be a fence. **Senator Tester** said that it deals with the multiple use aspect of the park and the fact that there are many campgrounds, fishing, hiking and more. The fence would be cumbersome.

**REPRESENTATIVE DON HEDGES** asked how we handle fencing requirements in other state parks. **Mr. Currie** replied that, unless it was deemed a nonhazardous area, under this law they would have to fence it if they reconstructed a right of way.

**Closing by Sponsor:**

*{Tape : 1; Side : B; Approx. Time Counter : 55.6}*

**Senator Tester** said that this bill came out of a grassroots effort. This has really come from the people.

**REP. WOLERY** will carry this bill.

**ADJOURNMENT**

Adjournment: 5:00 P.M.

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REP. DONALD L. HEDGES, Chairman

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ROBYN LUND, Secretary

DH/RL

**EXHIBIT** (agh53aad)